UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMERICA BANK, a Texas banking association,

Plaintiff,

Case No. _____________
Hon.

v.

ENAGIC CO. LTD., a Japanese limited corporation; ENAGIC USA, INC., a California corporation; JON SWARDSTROM, a citizen of California, JOHN SCHEPCOFF, a citizen of California, CLAUDIA RICHARDSON, a citizen of California, and JOHN DOE,

Defendants.
_______________________________________/

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PLAINTIFF'S VERIFIED COMPLAINT
AND DEMAND FOR JURY TRIAL

INTRODUCTION

Defendants claim that their Japanese water filters cure everything from cancer to allergies. In an attempt to (i) legitimize their scam, (ii) sell filters to the public, and (iii) attract new distributors from across the United States, Defendants assert that Comerica Bank endorses their business and products. This is absolutely false.

Those false statements have been made, and continue to be made, by Enagic distributors including Defendants Jon Swardstrom, John Schepcoff, Claudia Richardson, and John Doe ("Distributor Defendants") in connection with sales of Enagic water filters and related Enagic products. Under the guidance and control of Enagic, Distributor Defendants use Comerica's federally registered trademarks to hoodwink consumers and new distributors into believing that Enagic filters are legitimate and that Comerica endorses them. As one Distributor Defendant boasted, "Think about it, if our product business opportunity did not work or was not legitimate **there is no way Comerica would be willing to stick their necks out**" to support Enagic.

Comerica has no association with Enagic and has never had an association with Enagic. Comerica does not endorse Enagic and has never endorsed Enagic, let alone "stuck [its] neck out" for Enagic or its "cure-all" water filters. Despite Comerica's demands that Enagic and its distributors cease making false statements about Comerica, Enagic and its distributors continue to illegally use Comerica's name and trademarks to mislead and deceive the public, and to promote sales of Enagic products. For its Verified Complaint and Demand for Jury Trial against Defendants, Comerica states as follows:

NATURE OF THE ACTION

1. This is a civil action for trademark infringement, false endorsement and false affiliation, trademark dilution, unfair competition, common law trademark infringement, unfair competition, unjust enrichment, deceptive trade practices, and civil conspiracy.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Comerica Bank ("Comerica") is a Texas banking association with its principal place of business in Dallas, Texas.

3. Defendant Enagic USA, Inc. ("Enagic USA") is a California corporation with its principal place of business at 4115 Spencer Street, Torrance, California 90503. It may be served through its Agent for Service of Process, Toshio Maehara, at 24 Mela Lane, Rancho Palos Verdes, California 90275.

4. Defendant Enagic USA is the dedicated distribution arm and marketing force for Enagic filters and other Enagic products throughout the United States, including the Eastern District of Michigan.

5. Defendant Enagic USA has continuous and systemic contact with

Michigan through sales of Enagic products in Michigan.

6. Defendant Enagic Co. Ltd. ("Enagic Japan" and collectively with Enagic USA, "Enagic") is a Japanese limited corporation with its principal offices at 2-11-6 Gusuku, Nago, Okinawa, Japan 905-0013. It may be served through the Japanese Central Authority as required by the Hague Convention of 1965.

7. Defendant Enagic Japan manufactures and ships Enagic products throughout the world, including to the Eastern District of Michigan.

8. Defendant Enagic Japan has continuous and systemic contact with Michigan through sales and distribution of Enagic products in Michigan.

9. Defendant Jon Swardstrom is a California citizen.

10. Defendant Swardstrom identifies himself as a recruiter, trainer, and "6A-3 Distributor" of Enagic filters. He markets and sells Enagic filters online and throughout the United States, including the Eastern District of Michigan.

11. Defendant John Schepcoff is a California citizen.

12. Defendant Schepcoff describes himself as a "coach" and "mentor" for Enagic distributors. He runs websites at the domains <916xyz.com> and <myusawater.com> where he sells Enagic filters throughout the United States, including the Eastern District of Michigan. He also posts videos on YouTube.com and other domains where he markets Enagic filters throughout the United States, including the Eastern District of Michigan.

13. Defendant Claudia Richardson is a California citizen.

14. Defendant Richardson is the registrant of the domain <healthywaterlife.com>. At this domain, she facilitates the sale of "replica websites" that visitors can purchase to sell Enagic filters. Visitors throughout the United States, including the Eastern District of Michigan, may purchase "replica websites" at <healthywaterlife.com>.

15. John Doe is a United States citizen, but is domicile is currently unknown.

16. Defendant John Doe sells Enagic filters throughout the United States, including the Eastern District of Michigan. Through discovery, Comerica expects to obtain information about John Doe's identity, domicile, and position within the Enagic distributor network.

17. The claims described below arise out of Defendants' willful infringement of Comerica's federally registered trademarks, false endorsement and false affiliation, dilution, common law trademark infringement, unfair competition, unjust enrichment, and deceptive trade practices in violation of Sections 32(1), 43(a)(1), and 43(c)(2)(C) of the Trademark Act of 1946, as amended ("Lanham Act"), 15 U.S.C. §§1114(1), 1125(a)(1), and 1125(c)(2)(C); the common law; and the Michigan Consumer Protection Act, M.C.L.A. §445.903.

18. This Court has subject matter jurisdiction over this action under 28

U.S.C. §§1331 and 1338 and supplemental jurisdiction under 28 U.S.C. §1367. This Court also has jurisdiction under 28 U.S.C. §1332 as there is diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

19. This Court has personal jurisdiction over Defendants because Defendants have committed tortious acts and caused injury as described herein in this District, and engaged in and transacted business in this District.

20. Venue is proper in this District under 28 U.S.C. §§1391(b) and (c) as Defendants do business in this District and Comerica transacts business in this District and a substantial part of the events giving rise to the claims alleged herein occurred and are continuing to occur in this District.

GENERAL ALLEGATIONS

A. Comerica's Financial Services And Its Famous Trademark.

21. Comerica is a financial services company headquartered in Dallas, Texas. It is among the 25 largest United States financial holding companies, with approximately $73 billion in assets as of December 31, 2016.

22. In addition to Texas, Comerica has approximately 473 bank locations in Arizona, California, Florida, and Michigan, with select businesses operating in several other states, as well as in Canada and Mexico.

23. Since 1982, Comerica has offered its banking and financial services

under the mark COMERICA ("Comerica Mark").

24. The Comerica Mark is used in connection with a wide variety of financial and related services, including banking and financial services, credit card services, payroll services, lending services, financial advice and consulting, foreign exchange and money market trading services, trust management services, asset management services, investment and brokerage services, financial portfolio management, and online trading services. The Comerica Mark also identifies Comerica's offering of securities to retail and institutional customers.

25. Comerica is the owner of numerous United States trademark registrations incorporating the Comerica Mark, including:

a) Registration No. 1,251,846 for the service mark, COMERICA, for "banking services." Comerica has used this mark in connection with these services since 1982. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit A**.

b) Registration No. 1,776,041 for the service mark, COMERICA (and Design), for "banking services." Comerica has used this mark in connection with these services since 1992. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit B**.

c) Registration No. 3,150,399 for the service mark, COMERICA SECURITIES ONLINE, for "Financial investment and brokerage services in the field of stocks, bonds, securities, mutual funds, retirement plans and trusts." Comerica has used this mark in connection with these services since 2005. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit C**.

d) Registration No. 3,326,132 for the service mark, COMERICA TREASURY MANAGEMENT CONNECT, for "Banking services featuring information access and transactions via a computer." Comerica has used this mark in connection with these services since 2006. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit D**.

e) Registration No. 3,950,474 for the service mark, COMERICA WEB BANKING, for "banking services provided through a global computer information network." Comerica has used this mark in connection with these services since 2000. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit E**.

f) Registration No. 4,746,568 for the service mark, COMERICA BANK, for "Banking services; Financing services; Financial advisory and consultancy services." Comerica has used this mark in connection with these services since 2014. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit F**.

g) A list of Comerica's registered marks consisting in whole or in part of the Comerica Mark is attached hereto as **Exhibit G**.

26. Many of Comerica's U.S. Registrations are incontestable, valid and subsisting, under Section 15 of the Lanham Act, 15 U.S.C. §1065.

27. The Comerica Mark is coined, distinctive, and powerful, and symbolizes the substantial, valuable goodwill of Comerica. Comerica invests millions of dollars every year in the promotion of the products and services identified by the Comerica Mark. As a result of its long use, and the widespread commercial recognition of the Comerica Mark, the Comerica Mark is famous under United States federal and state trademark laws.

28. Comerica's promotion and use of the Comerica Mark has caused the public to associate the Comerica Mark with Comerica and to believe that goods and services provided in connection with the Comerica Mark are exclusively associated with, or are sponsored by, Comerica.

B. Defendant Enagic USA And All Other Enagic Entities Are Alter-Egos Of Enagic Japan.

29. Defendant Enagic describes itself as a "true global company" that manufactures, markets, and sells water filters throughout the world by utilizing a sophisticated pyramid scheme.

30. Although Enagic has different corporate forms (including Defendants Enagic Japan and Enagic USA) these entities are all alter-egos of Defendant Enagic Japan.

31. Defendant Enagic claims it has "branches worldwide servicing every country," and describes its worldwide locations as "branches" or "offices" of the same Enagic company.

32. Defendant Enagic advertises that it "change[s] lives around the globe" and "share[s] true health with the world."

33. Hironari Oshiro is the CEO and Founder of Defendant Enagic Japan.

34. Upon information and belief, Hironari Oshiro also is a director of Defendant Enagic USA, together with his relatives Hiroki Oshiro and Yaeko

Oshiro.

35. Upon information and belief, the Enagic entities are controlled by the founder of Enagic, Hironari Oshiro.

36. Upon information and belief, the Enagic entities do not observe corporate formalities.

37. Upon information and belief, the Enagic entities commingle funds with one entity paying the obligations of another.

38. Upon information and belief, the Enagic entities share the same employees and officers.

39. According to Enagic's website found at the domain, <www.enagic.com>, Defendant Enagic Japan manufactures Enagic filters "which are distributed globally" into "hundreds of thousands of homes worldwide." See, **Exhibit H**.

40. Defendant Enagic owns and operates the "Enagic Web System," which it describes as a system that "secures [Enagic's] global image and protects every interest to continually expand the worldwide marketplace." Defendant Enagic claims "[t]his pre-approved, innovative web system will provide [Enagic's] distributors with the highest quality, cutting edge business tool so they can successfully and efficiently market their business." See, **Exhibit I**. It further describes the Enagic Web System as "the official worldwide business management

and marketing system for Enagic® Distributors."

41. Using the Enagic Web System, Defendant Enagic sells its distributors Enagic marketing materials, Enagic business cards, Enagic brochures, and other Enagic materials that Enagic distributors use to market and sell Enagic products.

42. Defendant Enagic Japan owns the following United States trademark registrations (collectively, the "Enagic Japan Marks"):

a) Registration No. 5,003,283 for the mark, ENAGIC, for "Electrolytic water generators for electrically decomposing tap water to generate electrolytic water and for removing chlorine odor from tap water." Enagic Japan claims it has used this mark in connection with these goods since 2003. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit J**.

b) Registration No. 5,003,280 for the mark, , for "Electrolytic water generators for electrically decomposing tap water to generate electrolytic water and for removing chlorine odor from tap water." Enagic Japan claims it has used this mark in connection with these goods since 2003. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit K**.

c) Registration No. 4,063,154 for the mark, KANGEN WATER, for "Electrolytic water generators for electrically decomposing tap water to generate electrolytic water and for removing chlorine odor from tap water." Enagic Japan claims it has used this mark in connection with these goods since 2005. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit L**.

43. Defendant Enagic's website also states that Defendant "Enagic USA and its related branch offices are the dedicated distribution arm and marketing

force for Enagic throughout the United States." See, **Exhibit H**.

44. Defendant Enagic USA owns the following United States trademark registrations (collectively with the Enagic Japan Marks, the "Enagic Marks"):

a) Registration No. 3,852,774 for the mark, CHANGE YOUR WATER . . . CHANGE YOUR LIFE., for "Electrolytic water generators for electrically decomposing tap water to generate electrolytic water and for removing chlorine odor from tap water." Enagic USA claims it has used this mark in connection with these goods since 2007.

b) Registration No. 4,422,324 for the mark, KANGEN, for "Beverages with a coffee base; Beverages with a tea base; Coffee; Coffee and tea; Coffee based beverages; Mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages; Tea; Tea-based beverages." Enagic USA claims it has used this mark in connection with these goods since 2007. A photocopy of the Certificate of Registration of this mark is attached hereto as **Exhibit M**.

45. In its application to register, KANGEN®, Defendant Enagic USA claimed ownership over the Enagic Japan Marks. See, **Exhibit N**.

46. The Enagic entities engage in the same business enterprise of marketing and selling Enagic products through the Enagic distributor network under the Enagic Marks.

C. Defendant Enagic's Business Model.

47. Defendant Enagic's main product is a water filter that, according to Enagic, "electrically decompos[es] tap water to generate electrolytic water" to make the water "alkaline." Defendants refer to this "electrolytic water" as KANGEN WATER®.

48. Defendant Enagic and its distributors laud the alleged health benefits of KANGEN WATER® to entice consumers to purchase Enagic filters.

49. For example, Defendant Enagic's purported "Medical Advisor", Dr. Horst S. Filtzer, M.D, has instructed distributors to tell cancer patients that drinking KANGEN WATER® will make them feel better.

50. Defendant Enagic distributors also identify Enagic filters as "medical devices" and KANGEN WATER® as treatment for cancer, lupus, psoriasis, allergies, muscular sclerosis, diabetes, and other debilitating diseases.

51. The Enagic filters are not FDA approved medical devices.

52. Defendant Enagic utilizes a distribution model akin to a pyramid scheme whereby distributors sell Enagic filters directly to consumers.

53. Defendant Enagic's model allows distributors to earn "points" by recruiting lower level distributors to sell Enagic filters directly to consumers. The more points earned by a distributor, the higher their compensation from Enagic.

54. An "Up-Line" is an Enagic distributor who recruits other distributors to sell Enagic filters.

55. A "Down-Line" is a recruited distributor below the "Up-Line".

56. A collection of an "Up-Line" and his or her "Down-Lines" is referred to as a "Team".

57. The screenshot shown below is used by Defendants to demonstrate a

"Team" and the Enagic compensation plan.

POWERFULLY REWARDING
8-POINT COMPENSATION SYSTEM
SD501 – $3,980
8 Points of commission @ $285 per point
$285
$285
$570
$855
2A
3A
You earn 1 point per sale on your first 2 legs and 2 points on your next legs till promotion down to your 8th level
You earn more points per sale as you are promoted up the ranks
This is something you do already. If you've ever recommended a restaurant, a movie etc you've participated in

Found at <www.youtube.com/watch?v=XoDh-DXqf3o>.

58. To become an Enagic distributor, individuals must be sponsored by an existing Enagic distributor, agree to strictly abide by Enagic's Policies & Procedures (the "Policies"), submit a Distributor Application/Agreement, and have that Application/Agreement accepted by Enagic. See, **Exhibit O**.

59. Defendant Enagic controls how its distributors market and sell Enagic products in many ways, including, but not limited to, the following:

a) licensing the Enagic Marks for distributors to use in advertising, marketing, promoting, and selling Enagic products[1];

b) maintaining a sophisticated compensation and delivery system;

c) mandating that Enagic's marketing materials are the only form of approved advertising[2];

d) retaining authority to discipline distributors that do not comply with the Policies[3]; and

e) training distributors on the marketing and sale of Enagic products.

D. Defendant Enagic And The Distributor Defendants Conspire To Sell Enagic Products By Trading Off Of Comerica's Goodwill.

60. Through its control and guidance, Defendant Enagic conspired with the Distributor Defendants to infringe the Comerica Mark in a number of ways.

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[1] See, the Policies at **Exhibit P**, p. 9, "[T]hese marks are of great value to the Company and are supplied to independent distributors for use only in an expressly authorized manner."

[2] See, **Exhibit P**, p. 9-10, "[D]istributors agree not to advertise Company products or services in any way other than the advertising or promotional material made available to independent distributor by the Company. . . . All advertising, direct mailing, and display including promotional products such as DVDs, CDs, Brochures, Flyers, etc. must be approved in writing before being disseminated, published or displayed. Advertising on radio, TV, newspaper, magazine, and website except independent distributor's own Enagic Web System ('EWS') website is strictly prohibited."

[3] See, **Exhibit P**, p. 25-26, "[D]istributor's violation of any Policies and Procedures . . . may result, at the Company's sole discretion, in one or more of the following disciplinary actions: (a) Issuance of a written warning or admonition. (b) Imposition of a fine, which may be imposed immediately or withheld from future commission checks. (c) Reassignment of all or part of an independent distributor's organization. (d) Freezing of commissions for an indefinite period. (e) Suspension, which may result in termination or reinstatement with conditions or restrictions. (f) Termination of distributorship.

(i) Defendant Jon Swardstrom.

61. Upon information and belief, Defendants Enagic and Swardstrom expressly or tacitly agreed that Defendant Swardstrom would use the Comerica Mark to attract customers and garner sales of Enagic filters by falsely affiliating Defendant Enagic with Comerica.

62. For example, Defendant Swardstrom posted at least one active YouTube video in which he is featured using the Enagic Marks and claiming affiliation between Comerica and Enagic.

63. In one of his YouTube videos that has over 4,000 views, Defendant Swardstrom states that Enagic "work[s] with Comerica" and that Comerica provides special financing to Enagic customers. See, e.g., **Exhibit Q** (DVD filed manually with the Court).

64. Upon information and belief, Defendant Swardstrom has instructed other Enagic distributors to use the Comerica Mark when marketing and promoting Enagic filters. Defendant Enagic either expressly or tacitly authorized this practice.

65. As an "Up-Line", Defendant Swardstrom is paid a higher compensation from Defendant Enagic when his "Down-Lines" use the Comerica Mark to sell Enagic filters.

(ii) Defendant John Schepcoff.

66. Upon information and belief, Defendants Enagic and Schepcoff expressly or tacitly agreed that Defendant Schepcoff would use the Comerica Mark to attract customers and garner sales of Enagic filters by falsely affiliating Enagic with Comerica.

67. For example, Defendant Schepcoff posted at least one active YouTube video in which he is featured using the Enagic Marks and claiming affiliation between Comerica and Enagic.

68. In one of his YouTube videos that has over 1,300 views, Defendant Schepcoff states the following:

> [Enagic's] prime lender is Comerica Bank. Comerica is a very prestigious bank and in fact one of the largest and oldest banks in the United States. It has been around since 1849. In fact, they even have a stadium named after them called 'Comerica Park' home to the Detroit Tigers major league baseball team. It's important you know this because this very same bank that owns this stadium in Detroit Tiger plays it also is willing to pay your way into our program because of how much they believe in our company's product.
>
> Think about it, if our product business opportunity did not work or was not legitimate there is no way Comerica would be willing to stick their necks out and enable our product to join our business for no money down. As a matter of fact, Comerica has set up a special 1-800 number just for our company, with trained customer services reps standing by waiting to process your application for our water device. And by the way, it

> takes less than 15 minutes over the phone you get approval. This is how serious Comerica Bank is about our product folks. **Exhibit R** (DVD filed manually with the Court at minutes 4:00 to 6:05).

69. Upon information and belief, Defendant Schepcoff has instructed numerous other Enagic distributors to use the Comerica Mark when marketing and promoting Enagic filters. Defendant Enagic either expressly or tacitly authorized this practice.

70. As an "Up-Line", Defendant Schepcoff is paid a higher compensation from Defendant Enagic when his "Down-Lines" use the Comerica Mark to sell Enagic filters.

(iii) Defendant Claudia Richardson.

71. Upon information and belief, Defendants Enagic and Richardson expressly or tacitly agreed that Defendant Richardson would use the Comerica Mark to attract customers and garner sales of Enagic filters by falsely affiliating Enagic with Comerica.

72. For example, she sells "replica websites" that distributors purchase to sell Enagic filters. See, **Exhibit S**. Each "replica website" uses the Enagic Marks and claims affiliation with Comerica. See, e.g., **Exhibit T**.

73. Defendant Richardson's "replica website" has been used by numerous Enagic distributors.

74. Upon information and belief, Defendant Richardson has instructed numerous other Enagic distributors to use the Comerica Mark when marketing and promoting Enagic filters. Defendant Enagic either expressly or tacitly authorized this practice.

75. As an “Up-Line”, Defendant Richardson is paid a higher compensation from Defendant Enagic when her “Down-Lines” use the Comerica Mark to sell filters.

(iv) Defendant John Doe.

76. Upon information and belief, Defendants Enagic and John Doe expressly or tacitly agreed that John Doe would use the Comerica Mark to attract customers and garner sales of Enagic filters by falsely affiliating Defendant Enagic with Comerica.

77. Upon information and belief, Defendant John Doe has instructed numerous other Enagic distributors to use the Comerica Mark when marketing and promoting Enagic filters. Defendant Enagic either expressly or tacitly authorized this practice.

78. As an “Up-Line”, Defendant John Doe is paid a higher compensation from Enagic when his “Down-Lines” use the Comerica Mark to sell filters.

(v) <u>Rampant Infringement By Other Enagic Distributors</u>.

79. Infringement of the Comerica Mark is rampant among Enagic distributors.

80. Upon information and belief, Defendant Enagic and various other distributors expressly or tacitly agreed to use the Comerica Mark to attract customers and garner sales of Enagic filters by falsely affiliating Defendant Enagic with Comerica.

81. Below are just a few examples of other Enagic distributors unlawfully using the Comerica Mark:

a) A video posted on YouTube.com that has over 150 views found at <www.youtube.com/watch?v=n3HAvZePrOo> claims endorsement of Defendant Enagic by Comerica. This video explains financing options for Enagic filters and that "one simple way [to finance an Enagic filter] is to apply with our partner Comerica Bank to get 100% financing with no money down and zero interest. You see, Comerica Bank is one of the biggest banks in America, it even has a professional baseball park named after it called Comerica Field (sic), and it is the home of the Detroit Tigers. Now this major bank sees the value in Enagic system and has partnered up with Enagic to offer up this amazing loan package as a way to spread true health globally with compassion. . . . [A]ll you have to do is call a special toll free number that is set up specifically for Enagic and apply on the phone." <u>See</u>, **Exhibit U** (DVD filed manually with the Court).

b) A video posted on YouTube.com that has over 500 views found at <https://www.youtube.com/watch?v=DOZWlVBOeQo> claims endorsement and affiliation between Defendant Enagic and Comerica. The video states: "it is no secret we partner with Comerica Bank" and instructs how to apply for financing at Comerica's proprietary website. <u>See</u>, **Exhibit V** (DVD filed manually with the Court). A screenshot of this infringement is shown below:

Apps
JobSpice | Resume
Outsourcing
Tools
Travel Sites
WSOs to Buy
Banner Networks
FAM Trips
Newspaper Printing
Other Bookmarks
Contact Us
Locations
Search...
Go
ComericA
PERSONAL
BUSINESS
WEALTH MANAGEMENT
New look, new experience.
Same dedication to you.
We're upgrading our website and web banking experience with a new design, new features and even better security.
Find out what's on the way.
Learn More
Comerica Web Banking®
User ID
Password
Login
or Sign Up
Forgot Password?
First Time User
Help
Login to other Comerica services
Choose Service
No Caps. No Limits
That's a bonus!
Sign up for the Comerica Visa® Bonus Rewards Card Today.
Keep an eye on your credit.
Help better protect your identity with IDMonitor.
0:01 / 2:37
Enagic's Comerica Financing Process
David Liciaga - Network Marketing Super Recruiter
Subscribe
711
506 views
Add to
Share
More
3
2

c) A video posted on YouTube.com that has over 19,000 views found at <www.youtube.com/watch?v=lpSDjtck18w> claims affiliation between Defendant Enagic and Comerica. It explains Defendant Enagic's compensation plan and states that "[W]e finance these machines through a third-party company called Comerica." See, **Exhibit W** (DVD filed manually with the Court at minutes 1:50 to 2:00).

d) A video posted on YouTube.com that has over 500 views found at <www.youtube.com/watch?v=c1E9jQ1bI3c> claims false endorsement of Defendant Enagic by Comerica. It instructs distributors to tell customers there is financing for Enagic filters through Comerica. See, **Exhibit X** (DVD filed manually with the Court at minutes 18:28 to 19:30).

e) A website found at <www.kangenwaterdaily.com/affordable-financing-options.html> claims false affiliation with Comerica. It states that Enagic has a "Coamerica (sic) Partnership" and provides detailed instructions on financing Enagic filters through Comerica. See, **Exhibit Y**.

f) Comerica found over a dozen other Enagic distributor websites that use the Comerica Mark. Upon information and belief, there are dozens more that Comerica has not yet discovered.

D. Comerica Tries, But Cannot Stop, The Rampant Infringement.

82. Comerica first learned of Defendant Enagic's use of the Comerica Mark in spring 2015 when Comerica's customer service representatives began getting calls about special financing for Enagic filters.

83. Comerica investigated and found widespread use of the Comerica Mark by Enagic distributors.

84. On April 7, 2015, Comerica sent a letter to Defendant Enagic explaining its rights in the Comerica Mark, identifying five specific domains where Enagic distributors were using the Comerica Mark, and demanding that Defendant Enagic cease its false affiliation with Comerica. See, **Exhibit Z**.

85. Defendant Enagic responded in a May 22, 2015 letter, stating that it does not know who owns the identified domains and that Enagic "never authorized or directed [its] employees or independent distributors to use the Comerica

[M]ark." See, **Exhibit AA**.

86. Comerica sent a June 4, 2015 follow-up letter. See, **Exhibit BB**.

87. Defendant Enagic responded through an email from its General Counsel on June 4, 2015.

88. In that email, Defendant Enagic again resorted to blissful ignorance, stating that it is "unclear who owns" the domains infringing the Comerica Mark and assured Comerica that it is "looking into their infringing use of [Enagic's] own trademarks as [it] had not authorized this use." See, **Exhibit CC**.

89. In the summer of 2015, Comerica sent a series of cease and desist letters to 19 Enagic distributors using the Comerica Mark to claim false endorsement or affiliation with Enagic. Those letters were forwarded to Defendant Enagic's General Counsel. See, **Exhibit DD** and **Exhibit EE**.

90. Comerica received mixed responses from recipients of these cease and desist letters.

91. One Enagic distributor informed Comerica that his "Up-Line", Defendant Swardstrom, instructed him to use the Comerica Mark.

92. Comerica sent an email to Defendant Enagic's General Counsel on July 16, 2015 to inform Defendant Enagic of Defendant Swardstrom's unlawful activity. See, **Exhibit FF**.

93. Enagic responded that same day recognizing that Defendant

Swardstrom is an Enagic distributor but denying liability because the dispute is "between [Defendant Swardstrom] and Comerica." Id.

94. Defendant Enagic was on notice of infringing activity at least as early as April 7, 2015.

95. As discussed above, Defendant Enagic mandates that its distributors use certain materials for advertising, promoting, and selling Enagic products.

96. Defendant Enagic is the exclusive supplier of Enagic products to its distributors. It also provides training and facilitates a sophisticated compensation and distribution system for its distributors.

97. After April 7, 2015, Defendant Enagic continued to provide Distributor Defendants with these necessary materials knowing that Distributor Defendants are using these materials in connection with the infringing activity.

98. After April 7, 2015, Defendant Enagic continued to train and compensate Distributor Defendants knowing that they are engaging in infringing activity.

99. Although it has the power to do so, Defendant Enagic failed to take any action to stop or prevent Distributor Defendants from infringing the Comerica Mark.

100. Upon information and belief, Defendant Enagic has an express or tacit agreement with the Distributor Defendants to attract customers and garner

more sales of Enagic filters by using the Comerica Mark.

101. Comerica has spent significant time, money, and effort to prevent infringing activity, but it continues to exist.

102. Comerica has no adequate remedy at law.

COUNT I

TRADEMARK INFRINGEMENT UNDER SECTION 32(1) OF THE LANHAM ACT AGAINST ALL DEFENDANTS

103. Comerica incorporates by reference the allegations in paragraphs 1 through 102 of this verified complaint.

104. Comerica has used its federally registered Comerica Mark in commerce in connection with its financial products and services since 1982.

105. Defendants had both actual and constructive knowledge of Comerica's ownership of and rights in the Comerica Mark prior to Defendants' infringing use of the Comerica Mark.

106. Defendants adopted and continue to use in commerce the Comerica Mark and/or marks confusingly similar to thereto, with knowledge of Comerica's superior rights, and with the intent to cause confusion, mistake, and/or to deceive.

107. Defendants offer their respective goods and services in the same channels of trade as those in which Comerica's legitimate goods and services are offered.

108. Defendants' infringing use of the Comerica Mark is calculated to and is likely to deceive, mislead, and confuse the relevant trade and public as to the source or sponsorship of Defendants' goods and services.

109. Defendants' conduct therefore constitutes knowing, deliberate, and willful infringement of the Comerica Mark in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

110. Defendant Enagic's actions and omissions also constitute knowing and deliberate contributory infringement of the Comerica Mark as Enagic intentionally induced its distributors to infringe the Comerica Mark by providing higher compensation and continued to supply necessary materials and training to distributors after it knew or should have known its distributors were engaging in trademark infringement.

111. Comerica has suffered and will continue to suffer damage, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Comerica has no adequate remedy at law. Comerica will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

COUNT II

INFRINGEMENT AND USE OF FALSE ENDORSEMENT AND FALSE AFFILIATION UNDER SECTION 43(a)(1)(A) OF THE LANHAM ACT AGAINST ALL DEFENDANTS

112. Comerica incorporates by reference the allegations in paragraphs 1 through 111 of this verified complaint.

113. Defendants are deliberately and willfully trading on Comerica's long-standing and hard-earned goodwill in the Comerica Mark and the reputation established by Comerica, as well as confusing consumers as to the endorsement or affiliation of Defendants' goods and services.

114. Defendants' unauthorized and tortious conduct has also deprived and will continue to deprive Comerica of the ability to control the consumer perception of its products and services offered under the Comerica Mark.

115. Defendants' conduct is likely to cause confusion, mistake, or deception as to the affiliation, connection or association of Defendants with Comerica, and as to the sponsorship or approval of Defendants and their products and services, in violation of Section 43(a)(1)(A) of the Lanham Act.

116. Defendants had knowledge of Comerica's prior use of and rights in the Comerica Mark before the acts complained of herein. The knowing, intentional and willful nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. §1117(a).

117. Defendants' conduct constitutes willful infringement and the knowing use of false endorsement and affiliation in connection with goods and services placed into the stream of commerce, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

118. Defendant Enagic's actions and omissions also constitute knowing and deliberate contributory infringement as it intentionally induced its distributors to infringe the Comerica Mark by providing higher compensation and continued to supply necessary materials and training to distributors after it knew or should have known its distributors were engaging in false endorsement and false affiliation with Comerica.

119. Comerica has suffered and will continue to suffer damage, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Comerica has no adequate remedy at law. Comerica will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

COUNT III

TRADEMARK DILUTION BY TARNISHMENT UNDER SECTION 43(C)(2)(C) OF THE LANHAM ACT AGAINST ALL DEFENDANTS

120. Comerica incorporates by reference the allegations in paragraphs 1

through 119 of this verified complaint.

121. The Comerica Mark is famous and distinctive and is entitled to protection against dilution by blurring or tarnishment.

122. Defendants commenced use of the Comerica Mark in commerce after the "Comerica" name and mark had become famous and distinctive.

123. By using the Comerica Mark, Defendants have injured and will continue to injure Comerica's business reputation, tarnished the distinctive quality of Comerica's famous name and marks, and lessened the capacity of Comerica's famous Comerica Mark to identify and distinguish Comerica's goods and services.

124. The Federal Trademark Dilution Act, 15 U.S.C. §1125(c), protects the owner of a famous mark from the unlawful use of that mark by another, when the unlawful use dilutes and/or tarnishes the distinctive quality of the owner's mark.

125. Defendants' use of the Comerica Mark began after the Comerica Mark became famous under federal law.

126. Defendants' use of the Comerica Mark in commerce dilutes and tarnishes the distinctive quality of the Comerica Mark in violation of 15 U.S.C. §1125(c)(2)(C).

127. Comerica has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly

calculated and thus constitutes irreparable harm and an injury for which Comerica has no adequate remedy at law. Comerica will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

COUNT IV

COMMON LAW TRADEMARK INFRINGEMENT AGAINST ALL DEFENDANTS

128. Comerica incorporates by reference the allegations in paragraphs 1 through 127 of this verified complaint.

129. Defendants' conduct constitutes willful trademark infringement under common law.

130. Comerica has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Comerica has no adequate remedy at law. Comerica will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

COUNT V

COMMON LAW UNFAIR COMPETITION AGAINST ALL DEFENDANTS

131. Comerica incorporates by reference the allegations in paragraphs 1 through 130 of this verified complaint.

132. Defendants' conduct constitutes willful unfair competition by passing

off, misappropriation, and unprivileged imitation under common law.

133. Comerica has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Comerica has no adequate remedy at law. Comerica will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

COUNT VI

COMMON LAW UNJUST ENRICHMENT AGAINST ALL DEFENDANTS

134. Comerica incorporates by reference the allegations in paragraphs 1 through 133 of this verified complaint.

135. Defendants' unauthorized use of the Comerica Mark caused them to unjustly benefit from Comerica's goodwill.

136. Defendants' illegitimate business activities and false affiliation with Comerica have caused Comerica to suffer loss to its goodwill and reputation.

137. Comerica has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Comerica has no adequate remedy at law. Comerica will continue to suffer irreparable harm

unless this Court enjoins Defendants' conduct.

COUNT VII

DECEPTIVE TRADE PRACTICES AGAINST ALL DEFENDANTS IN VIOLATION OF M.C.L.A. §445.903

138. Comerica incorporates by reference the allegations in paragraphs 1 through 137 of this verified complaint.

139. Defendants caused the probability of confusion or misunderstanding as to Comerica's sponsorship or approval of Defendants' goods and services through use of the Comerica Mark.

140. Defendants also represent that their goods and services are sponsored or approved by Comerica.

141. Defendants also caused the probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction with Comerica.

142. Comerica does not sponsor or approve Defendants' goods and services.

143. Comerica has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Comerica

has no adequate remedy at law. Comerica will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

COUNT VIII

CONSPIRACY TO COMMIT COUNTS I THROUGH VII AGAINST ALL DEFENDANTS

144. Comerica incorporates by reference the allegations in paragraphs 1 through 143 of this verified complaint.

145. Defendants agreed to act in concert to commit the acts and omissions identified in this complaint with the common goal of unlawfully using the Comerica Mark to boost sales of Enagic filters.

146. Defendant Enagic knew that the Distributor Defendants were unlawfully using the Comerica Mark to sell Enagic filters. Defendant Enagic did not take corrective action and, instead, has continued to supply the Distributor Defendants with the required marketing material and training. It also has continued to process Distributor Defendants' sales and exclusively supply them with Enagic products. Defendant Enagic continues to profit from the Distributor Defendants' knowing and intentional unlawful use of the Comerica Mark.

147. Defendant Enagic also incentivized this illegal activity by paying commissions to distributors and "Teams" who sold Enagic filters by claiming endorsement by Comerica.

148. Defendants gained extensive profits from their conspiracy to use the Comerica Mark.

149. Comerica has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Comerica in its federally registered marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Comerica has no adequate remedy at law. Comerica will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

RELIEF SOUGHT

WHEREFORE, Comerica requests an Order and Judgment as follows:

A. Entry of an Order preliminarily and then permanently enjoining and restraining Defendants, their officers, agents, employees, attorneys, successors and assigns, and all persons or entities acting in concert or participation with any of them, including all Enagic distributors, from the distribution, offering for sale, sale, advertising, and/or promotion of any goods or services utilizing: (a) the Comerica Mark, whether alone or in combination with any other word or design or any confusingly similar variations thereof; and (b) any other false endorsement or affiliation or any other word, name, symbol, or design calculated or likely to cause confusion or mistake in the mind of the trade or public or to deceive the trade or public into believing that Defendants' goods or services are authorized, endorsed or sponsored by Comerica or are connected or affiliated in any way with Comerica or its products or services;

B. Directing Defendants to file with the Court and serve on Comerica's counsel, within thirty (30) days after entry of any injunction issued by the Court in this action, a sworn written statement setting forth in detail the manner and form in which Defendants have complied with the injunction as provided in 15 U.S.C. §1116(a);

D. Awarding Comerica damages for Defendants' acts of trademark infringement, dilution, unfair competition, unjust enrichment, and deceptive trade practices as complained of herein;

E. Directing Defendants to account to Comerica for their profits arising from the conduct complained of herein, including profits made by the Distributor Defendants' "Teams";

G. Awarding Comerica treble damages for Defendants' willful acts of infringement of the Comerica Mark and acts of false endorsement and affiliation in violation of 15 U.S.C. §1125(a)(1)(A);

H. Awarding Comerica punitive damages for its common law claims;

I. Awarding Comerica its reasonable attorneys' fees, taxable costs, and disbursements of this action under 15 U.S.C. §1117(a), M.C.L. §445.911; and the common law; and

J. Awarding Comerica such other and further relief as the Court deems just.

Respectfully submitted

Bodman, PLC

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April 10, 2017
Detroit, Michigan

VERIFICATION

I declare under penalty of perjury that the factual statements set forth in the foregoing complaint are true and correct to the best of my information, knowledge and belief.

COMERICA BANK

By: [signature]

Printed: DJ Culkar

Its: SVP and General Counsel